



INTERIOR BOARD OF INDIAN APPEALS

Red Lake Band of Chippewa Indians v. Minneapolis Area Director,
Bureau of Indian Affairs

16 IBIA 136 (05/18/1988)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RED LAKE BAND OF CHIPPEWA INDIANS, : Decision Affirmed
Appellant :
 :
v. :
 : Docket No. IBIA 86-31-A
AREA DIRECTOR, MINNEAPOLIS :
AREA OFFICE, BUREAU OF INDIAN :
AFFAIRS, :
Appellee : May 18, 1988

On March 24, 1986, the Board of Indian Appeals (Board) received a letter from the Red Lake Band of Chippewa Indians (appellant) asking it to assume jurisdiction over an appeal filed with the Washington, D.C., office of the Bureau of Indian Affairs (BIA) pursuant to 25 CFR Part 2. Appellant alleged that its appeal had been pending in the Washington office without decision for more than 30 days.

The appeal concerned a November 8, 1985, decision of the Minneapolis Area Director, BIA (appellee), disapproving Tribal Ordinance No. 1-85, which stated: "All Red Lake Court of Indian Offenses case records shall be kept confidential by the Court and information contained in the case records shall be withheld from public disclosure." Appellee disapproved the ordinance on the grounds that the Red Lake Court of Indian Offenses was a CFR court, organized and operated under 25 CFR Part 11, and, therefore, its court records were official records of the United States. Appellee concluded that the ordinance was contrary to Federal law in that it removed Federal records from Federal custody and control, and conflicted with the rights of criminal defendants under the Indian Civil Rights Act, 25 U.S.C. § 1302(6) (1982), and the Sixth Amendment to the United States Constitution.

By order dated March 26, 1986, the Board made a preliminary determination that it had jurisdiction over the case under 25 CFR 2.19, 1/ and requested the administrative record from BIA. The record was received on April 30, 1986. A notice of docketing, setting forth the parties' briefing privileges, was issued on May 1, 1986.

1/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

Although both parties fully briefed the appeal, they agreed it might be appropriate for the Board to delay a decision pending the outcome of United States v. Red Lake Band of Chippewa Indians, Civ. No. 6-86-34, filed in the United States District Court for the District of Minnesota. This action was brought by the United States seeking, inter alia, to recover documents removed from the Red Lake Court of Indian Offenses pursuant to the disapproved Ordinance No. 1-85 and Resolution No. 234-85, which ordered the records of all closed court cases to be transferred to the tribal archives.

The district court issued its decision on October 29, 1986. The court granted the United States' motion for summary judgment, holding that the Red Lake Court of Indian Offenses was a CFR court, subject to 25 CFR Part 11, and its records were records of a Federal agency. The tribe appealed this decision. On August 31, 1987, the decision was affirmed, 827 F.2d 380 (8th Cir. 1987). The tribe petitioned for certiorari. On March 7, 1988, the Supreme Court denied certiorari, 485 U.S. 935, 108 S. Ct. 1109 (1988).

Following the denial of certiorari, on March 22, 1988, the Board ordered appellant to show cause why appellee's November 8, 1985, decision should not be affirmed. Appellant was given until April 29, 1988, in which to respond to the show-cause order. No response has been received.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellee's November 8, 1985, decision is affirmed based upon the court decisions cited above.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge